

STATE OF LOUISIANA LEGISLATIVE AUDITOR

**Department of Justice
Selection of and Authorized Rates for
Legal Services Contractors Used in
Civil Cases and Personal Injury
Claims Against the State
Baton Rouge, Louisiana**

December 13, 2000



Performance Audit

**Daniel G. Kyle, Ph.D., CPA, CFE
Legislative Auditor**

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Office of the Legislative Auditor
State of Louisiana

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December 13, 2000

The Honorable John J. Hainkel, Jr.,
President of the Senate
The Honorable Charles W. DeWitt, Jr.,
Speaker of the House of Representatives

Dear Senator Hainkel and Representative DeWitt:

This performance audit report gives the results of our performance audit of the Department of Justice. This audit was conducted under the provisions of Title 24 of the Louisiana Revised Statutes of 1950, as amended.

This report contains our findings, conclusions, and recommendations. Appendix F contains the Department of Justice's response. Appendix G contains the Office of Risk Management's response. I hope this report will benefit you in your legislative decision-making process.

Sincerely,

Daniel G. Kyle, CPA, CFE
Legislative Auditor

DGK/dl

[DOJ]



Office of Legislative Auditor

Performance Audit Department of Justice Selection of and Authorized Rates for Legal Services Contractors Used in Civil Cases and Personal Injury Claims Against the State Executive Summary

The Attorney General is the chief legal officer of the state and the administrative head of the Louisiana Department of Justice. To fulfill his duties, the Attorney General may appoint legal services contractors to represent the state and state agencies. The results of this performance audit of the department's selection of and payment rates for legal services contractors are as follows:

Contracting Decisions *(See pages 5 through 12 of the report.)*

- The department maintained little documentation supporting its decisions to use legal services contractors.
- The department did not conduct formal cost-benefit analyses as required by law indicating that obtaining the legal services from the private sector was more cost-effective than providing such services itself.
- Many legal services contracts were awarded because the department did not have sufficient staff to perform the work. In the long run, it may be more cost-effective for the department to hire additional staff to handle more of its work.

Selection Process *(See pages 13 through 20 of the report.)*

- The department's process for selecting legal services contractors did not ensure that contracts were always awarded to the highest qualified candidates.
- The department maintained little documentation showing that legal services contractors met minimum qualifications. Department personnel also did not document why they selected particular contractors over other candidates.
- The department did not always prepare performance evaluations on the legal services contractors it used. Although the Office of Risk Management did prepare performance evaluations for almost all of its contractors, we found no evidence that the Department of Justice used any of the performance evaluations in its contractor selection decisions.
- The department selected some legal services contractors who had displayed performance deficiencies in the past.

Rate Setting Process *(See pages 21 through 24 of the report.)*

- Neither the Department of Justice nor the Office of Risk Management could provide documentation of a formal process for setting rates paid to legal services contractors that would ensure that the rates were fair and reasonable to the state. Current rates appear to be somewhat lower than market rates.

How did the Department of Justice decide to hire contractors for legal services?

We could not verify how the Department of Justice made its decisions to use legal services contractors because its process is informal and largely undocumented. State law requires that agencies conduct a cost-benefit analysis before seeking approval to enter into professional services contracts. According to a department official, rather than conducting formal cost-benefit analyses, the department made its decisions using an informal process based on the professional experience, evaluation, and judgment of its management team. However, the department retained no documentation to support these decisions.

According to a department official, the department used legal services contracts on many occasions because it did not have sufficient staff to perform the work. In the long run, it may be more cost-effective for the department to hire additional staff.

Because the department had not developed and implemented written policies and procedures governing its decisions to hire contractors (especially procedures to document these decisions), there is no assurance that the state's resources were used in the most efficient manner.

Recommendation 1: The Department of Justice should develop and fully implement written policies and procedures governing the process for determining whether to use legal services contractors or Department of Justice staff. These policies and procedures should include (in addition to a listing of acceptable reasons for using legal services contractors, which the department already has) a requirement for written cost-benefit analyses and a requirement for retaining documentation that supports the department's decisions.

Summary of Department of Justice Response: Partially Agree. The department has no objection to reducing its existing policies and procedures to writing. However, the department's current process of determining whether or not cases can be properly handled by department staff constitutes a "cost-benefit analysis," although not in written form, under the provisions of the State's procurement laws. The department acknowledges a miscommunication among its staff regarding the responsibility of conducting the cost-benefit analysis and has taken steps to correct it. (See Appendix F for the full text of the Department of Justice response.)

Legislative Auditor's Additional Comments: The department's response does not address the issue of retaining documentation showing the cost effectiveness of its decisions to contract for legal services. While there may not be a requirement in state law for such documentation, it would provide a record of accountability for the millions of dollars that are spent on contracted legal services each year.

Recommendation 2: The Department of Justice should conduct a formal long-term cost-benefit analysis to determine if it would be more cost-effective to hire additional staff and reduce or eliminate the use of legal services contractors because of staffing shortages. If the analysis

indicates that hiring additional staff would be more cost-effective, the department should request additional positions in its next budget request.

Summary of Department of Justice Response: Disagree. Attorney General Ieyoub has in the past and continues to conduct written long-term cost-benefit analyses. When General Ieyoub took office in 1992, he determined that the state could not continue its heavy reliance on private contract attorneys for its tort defense and developed a program to hire additional staff and reduce the number of cases handled by contract attorneys. The amount of contract attorney fees has been reduced by approximately \$8.7 million under his administration. The Attorney General continues to conduct long-term cost benefit analyses as reflected in the department's Operational Plan and through its performance indicators presented to the Legislature each year. (See Appendix F for the full text of the Department of Justice response.)

Legislative Auditor's Additional Comments: The schedule the department presents with its response is not a cost-benefit analysis. It is merely a summary of costs. It does not include program outputs or outcomes with the associated costs to produce them.

Matter for Legislative Consideration 1: The Legislature may wish to consider amending Louisiana R. S. 39:1497 to state that the agency making the decision to hire a contractor should prepare the cost-benefit analysis and certify to the Office of Contractual Review that it has been done. In addition, the Legislature may wish to specify the format and content of the cost-benefit analysis.

Matter for Legislative Consideration 2: The Legislature may wish to consider reviewing the results of the long-term cost-benefit analysis in Recommendation 2. If the analysis indicates that hiring additional staff within the department's Risk Litigation Division would be cost-effective, additional positions could be authorized. The money to pay for the additional staff would not require additional funding but could come from the money currently appropriated to pay for legal services contractors.

Did the Department of Justice's process for selecting legal services contractors result in contracts being awarded to the highest qualified persons, and were contractor performance evaluations useful to the selection process?

The Department of Justice's process for selecting legal services contractors did not ensure that the contracts were always awarded to the highest qualified candidates. State law requires that agencies negotiate with the most qualified candidates for all legal services contracts at compensation that is determined to be fair and reasonable to the state. However, we found several control weaknesses in the process used by the department to determine the highest qualified candidate. For instance, we found little evidence that the department ensured that each contract attorney met established minimum qualifications. We also found no documentation

showing that the department compared qualifications of candidates to determine who was most qualified.

In addition, we found that prior performance evaluations were not always useful to the selection process. Although the Office of Risk Management had prepared almost all of the required prior performance evaluations for the contracts we reviewed, the Department of Justice did not. Furthermore, we found no evidence that the Department of Justice used any of these prior evaluations when awarding subsequent contracts. We also found that some prior evaluations prepared by the Office of Risk Management did not accurately and completely reflect the contractors' performance. Finally, the Department of Justice awarded new contracts to some contractors who had displayed performance problems in the past.

The Department of Justice has not developed and fully implemented written policies and procedures for selecting legal services contractors. Without this basic control structure, there is no assurance that the department is obtaining the highest qualified legal services contractors at fair and reasonable prices. In addition, the lack of documentation to support the department's selection decisions could damage public confidence in this process.

Recommendation 3: The Department of Justice should develop and fully implement written policies and procedures governing the process for selecting legal services contractors. These policies and procedures should include, at a minimum, methods to ensure that only contractors who meet established minimum qualifications are selected; criteria and methods to evaluate candidates and to determine the most qualified; a requirement to document why particular contractors are selected over other candidates; a requirement to prepare performance evaluations on the legal services contractors that the department monitors; a requirement to use prior performance evaluations (both those prepared by the department and those prepared by the Office of Risk Management) in subsequent selection decisions; and a requirement to publish the appointment procedure annually in the *Louisiana Bar Journal*.

Summary of Department of Justice Response: Partially Agree. The Department of Justice agrees to state its general policies and procedures in writing, but strongly objects to memorializing the selection and decision-making process, as it would not be appropriate to document the strategic reasoning involved in the selection and decision-making process. For contracts under the Risk Litigation Division, the Office of Risk Management is responsible for verifying that contract attorneys meet the minimum qualifications. For the contracts issued by the Department of Justice, the department knew through professional experience whether the attorney/law firm met minimum qualifications before selecting the contractor. The department agrees to improve in preparing written performance evaluations for legal services contractors it uses. The department objects to the concept of appointing the “highest qualified candidate.” The State’s procurement statutes, codes and regulations do not require that professional service contracts be awarded to the “highest qualified candidates.” (See Appendix F for the full text of the Department of Justice response.)

Legislative Auditor's Additional Comments: In its response, the department agrees to draft policies and procedures, but it is unclear whether the department intends to include in the written policies and procedures all of the provisions we recommended. Each provision listed in the recommendation is an important means of ensuring accountability and proper stewardship of public resources. In addition, the department, not the Office of Risk Management, should ensure that prospective contractors have met minimum qualifications before appointing them. Finally, the department's response does not address the part of the recommendation dealing with publishing the appointment procedure in the *Louisiana Bar Journal*, which is required by state law.

Recommendation 4: The Office of Risk Management should ensure that all performance evaluations accurately and completely reflect contractors' performance and that all performance evaluations it prepares are forwarded to the Department of Justice.

Summary of Office of Risk Management Response: Partially Agree. The Office of Risk Management will make more effort to include accurate comments in evaluations. However, only one of the 50 evaluations reviewed during the audit was more than 30 days late, which is a remarkable record considering the workload of its employees. (See Appendix G for the full text of the Office of Risk Management response.)

Legislative Auditor's Additional Comments: Although the statement that only one of 50 evaluations reviewed was late is accurate, it should be noted that the Office of Risk Management could not locate two other evaluations. In addition, the Office of Risk Management's response does not address the part of the recommendation dealing with forwarding the evaluations to the Department of Justice. It is critical for the Office of Risk Management to forward the forms to the Department of Justice so that the department will have them to use when making decisions on which contractors to hire.

Were the Department of Justice's billing rates for legal services contractors fair and reasonable to the state?

We could not determine whether the rates paid to legal services contractors were fair and reasonable. State law requires agencies to negotiate with prospective contractors at rates that are determined in writing to be fair and reasonable to the state. However, neither the Department of Justice nor the Office of Risk Management could provide documentation supporting the reasonableness and fairness of the rates that were in effect throughout the fiscal year ended June 30, 2000.

The rates paid to contractors we reviewed appear to be below current market rates, which could be considered a bargain for the state. Conversely, paying rates that are lower than market rates may discourage some potential contractors from applying for state legal services work.

Neither agency has developed and implemented written policies and procedures for setting contract rates. The lack of controls necessary to ensure that rates are fair and reasonable means that contractors could have been overpaid for their legal services or that the department, by not paying reasonable rates, may not have obtained the best representation for the state.

Recommendation 5: The Department of Justice should develop and fully implement written policies and procedures for setting hourly contract rates that are fair and reasonable to the state of Louisiana. The policies and procedures should include provisions for reviewing and updating the rates periodically and for retaining documentation that supports the department's rate setting decisions.

Summary of Department of Justice Response: Disagree. There is no requirement to provide documentation for setting contract rates. (See Appendix F for the full text of the Department of Justice response.)

Legislative Auditor's Additional Comments: The department's response does not address the issue of written policies and procedures for rate setting. While there may not be a requirement in state law to provide documentation for setting contract rates, doing so would help show that the rates paid to contractors are fair and reasonable to the state. In addition, stating the procedures in writing would ensure continuity over time in the way this function is to be handled.

Recommendation 6: The Office of Risk Management should develop and fully implement written policies and procedures for setting hourly contract rates that are fair and reasonable to the state of Louisiana and that are at or below the rate maximums set by the Department of Justice. The policies and procedures should include provisions for reviewing and updating the rates periodically and for retaining documentation that supports its rate setting decisions.

Summary of Office of Risk Management Response: Disagree. The State Risk Director does not need or use a written procedure for setting hourly contract rates. (See Appendix G for the full text of the Office of Risk Management response.)

Legislative Auditor's Additional Comments: Written policies and procedures are a means of providing reasonable assurance that the state's resources are used effectively and efficiently. They also help ensure continuity over time in the way functions are to be handled.

Introduction

Audit Initiation and Objectives

This performance audit was conducted under the provisions of Title 24 of the Louisiana Revised Statutes of 1950, as amended. In accordance with these statutes, the Office of the Legislative Auditor scheduled an audit of the Louisiana Department of Justice. This audit was approved by the Legislative Audit Advisory Council on August 26, 1999.

We conducted this performance audit on the Department of Justice's selection of and authorized rates for legal services contractors. We focused the audit on these areas for several reasons. First, we have not conducted a performance audit in these areas in the past. Second, the size of the annual expenditures for legal services contracts is significant. Last, the Legislature has expressed interest in tracking legal fees more closely. The objectives of the audit were to:

- Determine how the Department of Justice decided to hire contractors for legal services
- Determine whether the Department of Justice's process for selecting legal services contractors resulted in contracts being awarded to the highest qualified persons and whether contractor performance evaluations were useful to the selection process
- Determine whether the Department of Justice's billing rates for legal services contractors were fair and reasonable to the state

Appendix A describes the scope and methodology for this audit.

Background

Article IV, Section 8 of the Louisiana Constitution of 1974 states that the Attorney General is the chief legal officer of the state and the head of the Louisiana Department of Justice. The Constitution also states that the Attorney General shall appoint assistant attorneys general who serve at his pleasure. In addition, the Constitution empowers the Attorney General with the authority to initiate, prosecute, or intervene in any civil action or proceeding for the assertion or protection of any right or interest of the state. Louisiana R. S. 49:257(A) stipulates that the Attorney General shall represent the state and all departments and agencies of state government in all litigation arising out of or involving tort or contract. The Attorney General, at his discretion, may also represent the interests of the state in any action or proceeding in which the constitutionality of a Louisiana statute or a resolution of the Legislature is challenged or assailed.

To fulfill these duties, the Attorney General employs a staff of attorneys and support personnel. In addition, he may appoint legal services contractors to represent the state and state agencies, subject to concurrence by the Commissioner of Administration (Louisiana R. S. 49:258). To administer these appointments, the Attorney General uses professional services contracts. Chapter 16 of Title 39 of the Louisiana Revised Statutes (R. S. 39:1481 *et seq.*) provides the rules and guidelines for the procurement of professional services contracts. Louisiana R. S. 39:1481(B) sets forth the underlying purposes and policies of Chapter 16. These purposes and policies include, among other things:

- To provide increased economy on state procurement activities by fostering effective competition
- To provide safeguards for the maintenance of a procurement system of quality and integrity

In addition, Attorney General Opinion No. 86-664 says that the rules and regulations promulgated pursuant to Chapter 16 of Title 39 must be complied with. The opinion further states that Louisiana R. S. 39:1481 *et seq.* regulate the procurement of professional services by the state.

The professional services contracts used to administer the appointment of legal services contractors are with private law firms or private attorneys and pay hourly rates for the various legal services provided. Along with a lead attorney, the contracts often include support staff such as paralegals and law clerks. Litigation may last for many years. Contracts, however, are usually written for three years at most. When a contract expires and litigation is ongoing, if the Department of Justice wants to continue to use a legal services contractor, a new contract must be awarded. Many current contracts are renewals of prior contracts for cases where the litigation has spanned longer than the length of the original contract.

When the Department of Justice decides to use a legal services contractor for civil cases, the department selects the contractor, issues the contract, and monitors the contractor's performance, which should include conducting a performance evaluation upon the expiration of the contract. The contractors are paid using funds appropriated to the Department of Justice. In personal injury (i.e., tort) cases handled by the department's Risk Litigation Division, however, the process is somewhat different. These cases are covered by the state's Self-Insurance Fund, which is overseen by the Office of Risk Management within the Division of Administration. The contractors are paid through this fund. In these cases, when the Department of Justice decides to use a contractor, the department selects the contractor. However, the Office of Risk Management issues the contract and monitors the contractor's performance, which should include conducting the performance evaluation. As previously stated, this audit focused on the Department of Justice's selection of legal services contractors, whether or

not these contracts were issued by the Department of Justice or the Office of Risk Management.

The Risk Litigation Division within the Department of Justice uses legal services contractors far more often than the department's other divisions combined. According to department officials, during the fiscal year ended June 30, 2000, the department spent almost \$415,000 of its total budget of approximately \$33 million on legal services contracts. In contrast, according to information provided by the Office of Risk Management, approximately \$11.4 million was spent on private legal services contractors who handled risk litigation cases during this time period. See Appendix B for a detail of these expenditures. As previously stated, many of the current contracts are renewals of previous contracts for cases where the litigation began more than three years ago. Therefore, some of the expenditures detailed in Appendix B were for contractors who were originally selected in previous years for cases that were still ongoing.

The Attorney General sets the maximum hourly rates paid to all legal services contractors who work for the state. The Office of Risk Management generally compensates its contractors at rates lower than the maximums set by the Attorney General. See Appendix C for the rates paid by the Department of Justice and those paid by the Office of Risk Management.

Issue for Further Study

Monitoring of legal services contractors was not included in the scope of this audit. However, monitoring is a very important aspect of contract administration. Therefore, further study of this issue may be warranted in the future.

Report Organization

The remainder of this report is divided into the following sections and appendices:

- The section titled **Contracting Decisions** describes our audit results and recommendations regarding the first audit objective.
- The section titled **Selection Process** describes our audit results and recommendations regarding the second audit objective.
- The section titled **Rate Setting Process** describes our audit results and recommendations regarding the third audit objective.

- **Appendix A** contains the audit scope and methodology.
- **Appendix B** contains a detail of legal services contractor expenditures for fiscal year ended June 30, 2000.
- **Appendix C** contains the rates paid to legal services contractors by the Department of Justice and those paid by the Office of Risk Management.
- **Appendix D** contains the Department of Justice's minimum qualifications for contract attorneys.
- **Appendix E** contains the results of our survey of legal services contractors regarding the rates they charge in the private sector.
- **Appendix F** contains the Department of Justice's response to this audit report.
- **Appendix G** contains the Office of Risk Management's response to this audit report.

Contracting Decisions

How did the Department of Justice decide to hire contractors for legal services?

We could not verify how the Department of Justice made its decisions to use legal services contractors because its process is informal and largely undocumented. State law requires that agencies conduct a cost-benefit analysis before seeking approval to enter into professional services contracts. According to a department official, rather than conducting formal cost-benefit analyses, the department made its decisions using an informal process based on the professional experience, evaluation, and judgment of its management team. However, the department retained no documentation to support these decisions.

According to a department official, the department used legal services contracts on many occasions because it did not have sufficient staff to perform the work. In the long run, it may be more cost-effective for the department to hire additional staff.

Because the department had not developed and implemented written policies and procedures governing its decisions to hire contractors (especially procedures to document these decisions), there is no assurance that the state's resources were used in the most efficient manner.

Recommendation 1: The Department of Justice should develop and fully implement written policies and procedures governing the process for determining whether to use legal services contractors or Department of Justice staff. These policies and procedures should include (in addition to a listing of acceptable reasons for using legal services contractors, which the department already has) a requirement for written cost-benefit analyses and a requirement for retaining documentation that supports the department's decisions.

Summary of Department of Justice Response: Partially Agree. The department has no objection to reducing its existing policies and procedures to writing. However, the department's current process of determining whether or not cases can be properly handled by department staff constitutes a "cost-benefit analysis," although not in written form, under the provisions of the State's procurement laws. The department acknowledges a miscommunication among its staff regarding the responsibility of conducting the cost-benefit analysis and has taken steps to correct it. (See Appendix F for the full text of the Department of Justice response.)

Legislative Auditor's Additional Comments: The department's response does not address the issue of retaining documentation showing the cost effectiveness of its decisions to contract for legal services. While there may not be a requirement in state law for such documentation, it would provide a record of accountability for the millions of dollars that are spent on contracted legal services each year.

Recommendation 2: The Department of Justice should conduct a formal long-term cost-benefit analysis to determine if it would be more cost-effective to hire additional staff and reduce or eliminate the use of legal services contractors because of staffing shortages. If the analysis

indicates that hiring additional staff would be more cost-effective, the department should request additional positions in its next budget request.

Summary of Department of Justice Response: Disagree. Attorney General Ieyoub has in the past and continues to conduct written long-term cost-benefit analyses. When General Ieyoub took office in 1992, he determined that the state could not continue its heavy reliance on private contract attorneys for its tort defense and developed a program to hire additional staff and reduce the number of cases handled by contract attorneys. The amount of contract attorney fees has been reduced by approximately \$8.7 million under his Administration. The Attorney General continues to conduct long-term cost benefit analyses as reflected in the department's Operational Plan and through its performance indicators presented to the Legislature each year. (See Appendix F for the full text of the Department of Justice response.)

Legislative Auditor's Additional Comments: The schedule the department presents with its response is not a cost-benefit analysis. It is merely a summary of costs. It does not include program outputs or outcomes with the associated costs to produce them.

Matter for Legislative Consideration 1: The Legislature may wish to consider amending Louisiana R. S. 39:1497 to state that the agency making the decision to hire a contractor should prepare the cost-benefit analysis and certify to the Office of Contractual Review that it has been done. In addition, the Legislature may wish to specify the format and content of the cost-benefit analysis.

Matter for Legislative Consideration 2: The Legislature may wish to consider reviewing the results of the long-term cost-benefit analysis in Recommendation 2. If the analysis indicates that hiring additional staff within the department's Risk Litigation Division would be cost-effective, additional positions could be authorized. The money to pay for the additional staff would not require additional funding but could come from the money currently appropriated to pay for legal services contractors.

No Formal Cost-Benefit Analyses Conducted

Louisiana R. S. 39:1497 states that before seeking approval for certain contracts, including legal services contracts, the agency using the contractor must certify to the Office of Contractual Review that particular requirements have been met. One of the requirements is that the agency has conducted a cost-benefit analysis indicating that obtaining the services from the private sector is more cost-effective than providing such services itself or by another state agency. The law states that this analysis should include both short-term and long-term components. In general, cost-benefit analyses and a similar form of evaluation, cost-effectiveness analyses, compare a program's outputs or outcomes with the costs (resources expended) to produce them. Cost-benefit analyses aim to identify all

relevant costs and benefits, usually expressed in dollar terms. Cost-effectiveness analyses assess the cost of meeting a single goal or objective and can be used to identify the least costly alternative to meet that goal.

As noted in the Audit Scope and Methodology in Appendix A, we selected all six contracts awarded by the Department of Justice during the fiscal year ended June 30, 2000, and a sample of 60 of the 368 contracts awarded by the Office of Risk Management during the same time period for detailed audit work. We reviewed supporting documentation at the Department of Justice for the six contracts that the department awarded. We did not find any documentation showing that the department had completed the required cost-benefit analyses. When asked about conducting the cost-benefit analyses, department officials stated that they are aware of the cost-effectiveness of their decisions, but they do not document their thoughts.

We located copies of certification letters that the department sent to the Office of Contractual Review for three of these six contracts¹. Each of the certification letters states that a cost-benefit analysis has been conducted and is available for review. We discussed this issue with the Department of Justice staff person who prepares and sends the certification letters. She said that she includes this statement in the certification letters because she assumed the division requesting the contractor was conducting the cost-benefit analyses that are required by law. We also discussed this issue with the State Contracts Administrator at the Office of Contractual Review. She stated that agencies are not required to submit copies of their cost-benefit analyses, but she may request them if necessary. Thus, the department has misinformed the Office of Contractual Review in the certification letters about having cost-benefit analyses available for review. A department official stated that this was due to a lack of communication.

We also reviewed files maintained by the Risk Litigation Division within the Department of Justice for the 60 sample contracts that the Office of Risk Management awarded. We did not find any documentation showing that the department had completed cost-benefit analyses for these contracts. We then reviewed files maintained by the Office of Risk Management for these 60 contracts. The majority of the files contained cost-benefit analysis forms. The forms, however, are general in that they all contain the following statement related to comparing costs to benefits:

Procurement of legal services through this contract provides the Office of Risk Management with the necessary legal representation to defend the state in this claim against the state which if not properly defended could result in losses or liabilities which far exceed the cost of this contract.

¹ We could not locate the certification letters for the other three contracts.

The forms do not compare the costs of using Department of Justice staff to the costs of using legal services contractors, as required by law. Instead, they compare the costs of the contracts to the costs of losing the cases. The State Risk Director, who oversees the Office of Risk Management, said that because the Department of Justice makes the decision on whether to use a contractor or department staff, the Office of Risk Management's only option is to hire a contractor based on the Department of Justice's decisions, or they will lose the case. He also said that since the Department of Justice makes the contracting decision, the department should prepare the cost-benefit analyses rather than the Office of Risk Management. An amendment to Louisiana R. S. 39:1497 may help clarify whose responsibility it is to prepare the cost-benefit analyses and the content and format of the analyses.

Reasons for Using Legal Services Contractors

In discussions with Department of Justice officials, we learned that rather than preparing formal cost-benefit analyses, they decided to use legal services contractors based on several situations. The most common situations are as follows:

- Cases that are ongoing but the attorneys' contracts have expired and the Department of Justice decided to renew the contracts with the same attorneys (i.e., renewal)
- Cases for which the Department of Justice did not have sufficient staff to handle the additional work (i.e., caseload)
- Cases that are similar to other cases already contracted to legal services contractors (i.e., companion)
- Cases in which the Department of Justice had a conflict of interest (i.e., conflict of interest)
- Cases for which the Department of Justice did not have the expertise necessary to represent the state of Louisiana in the particular subject matter (i.e., expertise)
- Cases located in areas far from Department of Justice offices (i.e., geographic location)
- Cases for which the agency being sued or the Office of Risk Management requested a particular contractor (i.e., agency or ORM request)

According to a Department of Justice official, the determination of whether or not a case was placed into one of these categories or handled by department staff was based on the professional experience, evaluation, and judgment of Department of Justice management (including section chiefs, directors, deputy attorneys general, and the attorney general). Exhibit 1 on the following page shows the reasons cited for using legal services contractors and the number of times these reasons were cited for the 66 contracts we reviewed.

For the six contracts awarded by the Department of Justice, we did not find any information describing the reasons for using legal services contractors in the department's contract files. Instead, we obtained this information through interviews of Department of Justice officials.

For the 60 contracts awarded by the Office of Risk Management, we did find documentation confirming the reasons for using legal services contractors presented in Exhibit 1. Note that for 37 of these 60 contracts (62%), the current contract is a renewal of a previous contract. As previously explained, these are cases where the original contracts expired before litigation was complete. In these cases, the Department of Justice decided to continue using the same contractors rather than changing contractors during the ongoing litigation. Originally, these cases were probably contracted out for one of the other reasons described in the exhibit.

Exhibit 1 Reasons Department of Justice Used Legal Services Contractors Fiscal Year Ended June 30, 2000		
Reasons Cited	6 Contract Files Reviewed at Department of Justice	60 Contract Files Reviewed at Office of Risk Management
Renewal	4	37
Caseload	0	9
Companion	0	8
Conflict of Interest	1	3
Expertise	6	2
Geographic Location	0	2
ORM or Agency Request	0	2
TOTAL	11*	63*
* This total is greater than the number of contracts reviewed because the Department of Justice and the Office of Risk Management cited multiple reasons for using the legal services contractors.		
Source: Prepared by legislative auditor's staff using information obtained from file reviews and interviews conducted at Department of Justice and Office of Risk Management.		

Some of the reasons for using legal services contractors cited in Exhibit 1 may be cost-effective. For example, in "geographic location" cases, it may be more cost-effective to contract with local attorneys to provide legal services rather than using Department of Justice personnel who would incur travel expenses. However, department staff did not conduct a formal cost-benefit analysis using specifics for each such case. Rather, the department relied on the professional experience, evaluation, and judgment of its management team in making these decisions and retained no documentation to support their decisions. Therefore, we could not determine whether the use of contractors in these cases was cost-effective.

Long-term Cost-Benefit Analysis Needed

As can be seen from Exhibit 1 on page 10, the Department of Justice used legal services contractors on many occasions because it did not have sufficient staff in its Risk Litigation Division to perform the work. Nine of the 60 sample contracts awarded by the Office of Risk Management (15%) were awarded because of a shortage of Department of Justice staff (i.e., caseload). If we apply the sample results to the 368 total contracts awarded by the Office of Risk Management during the fiscal year ended June 30, 2000, it indicates that the office awarded between 25 and 86 of all contracts because of caseload problems².

Department of Justice officials explained that they would have preferred to use department staff in these cases because they thought it would have been more cost-effective to do so. According to the fiscal year 2000-2001 Executive Budget, for fiscal years ending 1997, 1998, and 1999, the average cost per case assigned to legal services contractors ranged from about \$5,000 to over \$6,500 per year. In contrast, the average cost of a case assigned to the department's Risk Litigation Division staff ranged from just under \$1,700 to over \$1,800. According to department officials, in the past they have requested additional staff based on this cost comparison. Their efforts, however, have been unsuccessful.

The average cost for legal services contractors in the Executive Budget comparison includes all cases assigned to contractors. Therefore, the average could include, for example, cases where contractors were hired because the Risk Litigation Division did not have the expertise to handle them. These cases may cost more to litigate and thus skew the average. A more detailed written long-term cost-benefit analysis comparing similar cases would clarify the cost-effectiveness of hiring additional Risk Litigation Division staff to handle more cases. If the cost-benefit analysis shows that additional staff in the Risk Litigation Division would be cost-effective, the money to pay for the additional staff should be available from the reduction in the use of legal services contractors.

No Written Policies and Procedures for Contracting Decisions

Management controls help government program managers achieve desired results through effective stewardship of public resources. These controls should provide reasonable assurance that the entity's resources are used effectively and

² Note that these figures are not based on a rigorous long-term cost-benefit analysis but on the undocumented, informal process of Department of Justice management used to make decisions on using legal services contractors.

efficiently. One of the primary management control techniques is the development and implementation of written policies and procedures. Policies and procedures should include authorizations, approvals, verifications, and the creation and maintenance of related records, which provide evidence of the completion of other control procedures.

During the time period reviewed in this audit, the Department of Justice did not have written policies and procedures governing the process to be used for deciding whether to use legal services contractors. During the audit, the department did, however, prepare a memorandum for us containing the following statement:

The decision to contract out stems from the nature of the litigation involved. If in-house staff cannot provide the requisite expertise or manpower to fully litigate the issue then we seek to have the matter contracted out.

This statement is short on the details we would expect to see for a decision-making process. It does not explain how the department determines whether in-house staff can handle the litigation or who makes these decisions. Thus, the department has not provided its staff with a formal, consistent decision-making process to follow.

Because of the informal nature of the decision-making process and the lack of documentation supporting its decisions, the Department of Justice cannot ensure and, as a result, we could not verify that the department's decisions were cost-effective.

Selection Process

Did the Department of Justice's process for selecting legal services contractors result in contracts being awarded to the highest qualified persons, and were contractor performance evaluations useful to the selection process?

The Department of Justice's process for selecting legal services contractors did not ensure that the contracts were always awarded to the highest qualified candidates. State law requires that agencies negotiate with the most qualified candidates for all legal services contracts at compensation that is determined to be fair and reasonable to the state. However, we found several control weaknesses in the process used by the department to determine the highest qualified candidate. For instance, we found little evidence that the department ensured that each contract attorney met established minimum qualifications. We also found no documentation showing that the department compared qualifications of candidates to determine who was most qualified.

In addition, we found that prior performance evaluations were not always useful to the selection process. Although the Office of Risk Management had prepared almost all of the required prior performance evaluations for the contracts we reviewed, the Department of Justice did not. Furthermore, we found no evidence that the Department of Justice used any of these prior evaluations when awarding subsequent contracts. We also found that some prior evaluations prepared by the Office of Risk Management did not accurately and completely reflect the contractors' performance. Finally, the Department of Justice awarded new contracts to some contractors who had displayed performance problems in the past.

The Department of Justice has not developed and fully implemented formal policies and procedures for selecting legal services contractors. Without this basic control structure, there is no assurance that the department is obtaining the highest qualified legal services contractors at fair and reasonable prices. In addition, the lack of documentation to support the department's selection decisions could damage public confidence in this process.

Recommendation 3: The Department of Justice should develop and fully implement written policies and procedures governing the process for selecting legal services contractors. These policies and procedures should include, at a minimum, methods to ensure that only contractors who meet established minimum qualifications are selected; criteria and methods to evaluate candidates and to determine the most qualified; a requirement to document why particular contractors are selected over other candidates; a requirement to prepare performance evaluations on the legal services contractors that the department monitors; a requirement to use prior performance evaluations (both those prepared by the department and those prepared by the Office of Risk Management) in subsequent selection decisions; and a requirement to publish the appointment procedure annually in the *Louisiana Bar Journal*.

Summary of Department of Justice Response: Partially Agree. The Department of Justice agrees to state its general policies and procedures in writing, but strongly objects to memorializing the selection and decision-making process, as it would not be appropriate to document the strategic reasoning involved in the selection and decision-making process. For contracts under the Risk Litigation Division, the Office of Risk Management is responsible for verifying that contract attorneys meet the minimum qualifications. For the contracts issued by the Department of Justice, the department knew through professional experience whether the attorney/law firm met minimum qualifications before selecting the contractor. The department agrees to improve in preparing written performance evaluations for legal services contractors it uses. The department objects to the concept of appointing the “highest qualified candidate.” The State’s procurement statutes, codes and regulations do not require that professional service contracts be awarded to the “highest qualified candidates.” (See Appendix F for the full text of the Department of Justice response.)

Legislative Auditor’s Additional Comments: In its response, the department agrees to draft policies and procedures, but it is unclear whether the department intends to include in the written policies and procedures all of the provisions we recommended. Each provision listed in the recommendation is an important means of ensuring accountability and proper stewardship of public resources. In addition, the department, not the Office of Risk Management, should ensure that prospective contractors have met minimum qualifications before appointing them. Finally, the department’s response does not address the part of the recommendation dealing with publishing the appointment procedure in the *Louisiana Bar Journal*, which is required by state law.

Recommendation 4: The Office of Risk Management should ensure that all performance evaluations accurately and completely reflect contractors' performance and that all performance evaluations it prepares are forwarded to the Department of Justice.

Summary of Office of Risk Management Response: Partially Agree: The Office of Risk Management will make more effort to include accurate comments in evaluations. However, only one of the 50 evaluations reviewed during the audit was more than 30 days late, which is a remarkable record considering the workload of its employees. (See Appendix G for the full text of the Office of Risk Management response.)

Legislative Auditor’s Additional Comments: Although the statement that only one of 50 evaluations reviewed was late is accurate, it should be noted that the Office of Risk Management could not locate two other evaluations. In addition, the Office of Risk Management’s response does not address the part of the recommendation dealing with forwarding the evaluations to the Department of Justice. It is critical for the Office of Risk Management to forward the forms to the Department of Justice so that the department will have them to use when making decisions on which contractors to hire.

Little Evidence That Attorneys Met Minimum Qualifications

According to Louisiana R. S. 49:258(1), all legal services contractors must meet or exceed written minimum qualifications, which are established by the Attorney General and the Governor or their designees. (See Appendix D for a list of the minimum qualifications for contract attorneys.) These minimum qualifications, along with a written appointment procedure, must be published at least annually in the *Louisiana Bar Journal* or a similar publication. We found little evidence that the department ensured that each contract attorney in our sample met the established minimum qualifications.

According to a Department of Justice official, the department did not consider minimum qualifications when selecting legal services contractors for the six contracts the department awarded during fiscal year ended June 30, 2000. The department also did not keep records of the qualifications of the contractors it selected.

For the 60 sample contracts awarded by the Office of Risk Management, an official within the Risk Litigation Division said that prospective contractors must submit documentation showing that they meet or exceed the minimum qualifications. However, in our review of the Department of Justice's records for these contracts, we found that the department awarded 32 of 60 (53%) of the contracts to candidates whose files did not contain complete information showing that they met the minimum qualifications. For instance, the sample included 27 contracts for medical malpractice claims. Of those 27 contracts, 24 (89%) were awarded to contractors whose files did not contain all necessary documentation regarding qualifications for defense of medical malpractice claims. Most frequently these 24 files did not contain documentation showing that the attorneys had at least three years of experience in the defense of medical malpractice claims. We also found that some files contained outdated documentation such as malpractice insurance declaration pages from prior years. If we project the results of the sample to the full population of 368 contracts, we estimate that anywhere from 154 to 239 contracts awarded during the fiscal year ended June 30, 2000, by the Office of Risk Management were awarded to contractors without assurance that they met all minimum qualifications.

No Documentation Showing Why Particular Contractors Were Selected Over Others

Louisiana R. S. 39:1499 states that agencies must negotiate with the highest qualified candidates for all professional services contracts, including legal services contracts. The negotiations are to determine compensation that is fair and reasonable to the state. In making this determination, agencies must consider,

in the following order of importance, the professional or technical competence of the prospective contractors, the technical merits of the offers, and the compensation, including fees. The statute also states that this determination is to be in writing. As stated earlier, Louisiana R. S. 49:258(1) requires annual publication of the appointment procedure.

The American Bar Association in its *Model Procurement Code for State and Local Governments: Recommended Regulations* recommends that agencies award contracts to candidates who are determined in writing to be the highest qualified based on a set of predetermined evaluation factors at compensation determined to be fair and reasonable. If agencies fail in their negotiations with the highest qualified candidate, a written record stating the reasons for the failure should be maintained and negotiations should begin with the next highest qualified candidate. After the contract has been awarded, the agency should prepare a memorandum stating how the evaluation factors were applied to determine the most qualified candidates.

It should be noted that the American Bar Association's *Model Procurement Code for State and Local Governments* is currently under revision. The new version was not yet available to the public. An early draft revises the sections dealing with procurement of legal services contracts. Rather than specifying how legal services contracts are to be procured, the draft authorizes a variety of selection techniques designed to provide the best competition for all types of procurement. Competitive sealed bidding is the preferred method of procurement. In general, this method awards the contract to the lowest responsible bidder whose bid meets all requirements. If an agency determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the state, the draft says that a contract may be entered into by competitive sealed proposals. This method awards the contract to the candidate whose proposal is determined in writing to be the most advantageous to the state, based on price and predetermined evaluation factors. If an agency determines that a situation exists that makes competitive sealed bidding or competitive sealed proposals impractical or contrary to the public interest, a "special" procurement is allowed. Under a "special" procurement, awards are made using such competition as is practicable under the circumstances. Also, the draft says that a written determination of the basis for the procurement and for the selection of the particular contractor shall be retained. While the draft does not name a particular procurement method for legal services contracts, it does encourage competition and call for written documentation stating why particular contractors were selected.

For all 66 contracts we reviewed, we found that Department of Justice personnel did not document why they selected those particular contractors over other candidates. The department also could not provide us with any documentation showing a comparison of the qualifications of the candidates who received the contracts to other candidates who were considered.

The Department of Justice did publish the minimum qualifications for contract attorneys in the *Louisiana Bar Journal*, as required by Louisiana R. S. 49:258. However, it did not publish the appointment procedure. When asked to describe the procedure used to select contractors, department officials prepared for us a memorandum that states that "the Attorney General selects contractors based upon whom he feels will best perform the job on behalf of the state." This procedure does not ensure effective competition or maintain quality and integrity, as required by Louisiana R. S. 39:1481(B).

No Evidence That Performance Evaluations Were Used in Selection Process

Administrative Code Title 34:V.136 states that agencies must use sufficient current information, including records concerning contractor performance, to determine that a prospective contractor meets certain standards. In addition, according to Louisiana R. S. 39:1500(B), agencies must prepare final reports evaluating the contractors' performance within 60 days after completion of performance. However, the Department of Justice and the Office of Risk Management did not always prepare performance evaluations on the legal services contractors they used. Also, we found no evidence that the Department of Justice used performance evaluations that had been prepared in the selection process.

Two of the six legal services contracts awarded by the Department of Justice over the last fiscal year (33%) were with contractors who had not previously been awarded legal services contracts by the department. Therefore, the department did not have prior performance evaluations to consider in its selection decisions for these contracts. However, the remaining four contracts (67%) were renewals. The department should have had performance evaluations on file for all four of these contracts, but it only had evaluations for two of the contracts. We found no evidence that the department used these two performance evaluations in its selection decisions.

The Office of Risk Management prepared performance evaluations for almost all of the contracts we reviewed that the office awarded. Of the 60 sample contracts the office awarded over the last fiscal year, eight (13%) were with attorneys who had not previously been awarded legal services contracts by the office. Therefore, the Department of Justice did not have prior performance evaluations to consider in its selection decisions for these contracts. However, the remaining 52 contracts (87%) were with attorneys who had been awarded legal services contracts by the Office of Risk Management in the past. The Office of Risk Management prepared performance evaluations for all but two of these 52 contracts (96%). For these two contracts, the Department of Justice had no performance evaluations to use in its selection decisions. For the 50 contracts for

which the Office of Risk Management did prepare performance evaluations, we could not determine whether the Department of Justice actually used the performance evaluations in its selection decisions. According to a department official, the department uses performance evaluations when necessary. However, we found no indication that the Office of Risk Management had sent or that the Department of Justice had received and reviewed the performance evaluations before deciding which contractors to select.

Some Contracts Awarded to Contractors With Performance Deficiencies

Administrative Code Title 34:V.136 states that prospective contractors must meet certain standards, including having a satisfactory record of integrity, judgment, and performance. Louisiana R. S. 39:1500(D) also states that agencies must not award contracts to contractors with delinquent performance evaluations from that agency. In addition, the National Association of State Purchasing Officials suggests that agencies adopt rules to assure that future contracts are not awarded to contractors who received unsatisfactory performance evaluations or who had records of poor past performance. However, we found that the Department of Justice selected some contractors who had displayed performance deficiencies in the past.

We reviewed the prior performance evaluations and supporting documents for the four renewal contracts issued by the Department of Justice. We did not find any comments on the performance evaluations indicating substandard performance.

We also reviewed the 50 prior performance evaluations for the 60 sample contracts issued by the Office of Risk Management. One of these evaluations was conducted a month after the expiration date of the contract. Thus, the Department of Justice would not have been able to use this evaluation in its decision to award a renewal contract to that contractor. We did not include this evaluation in our further analysis. Of the 49 performance evaluations on which we did conduct further analysis, we found that 10 (20%) contained comments indicating that the Office of Risk Management had problems with the contractors' performance. Examples of these comments are as follows:

- Case evaluations or other information requests not thorough/timely
- Case not prosecuted timely
- Difficulty contacting attorney
- Office of Risk Management not informed of ongoing case activities

- Invoices not submitted per billing guidelines (incorrect rates charged, billed for too many attorneys, invoices not submitted quarterly, etc.)

We also reviewed documentation supporting the performance evaluations. We found indications of performance deficiencies in the supporting documents for an additional eight evaluations, yet the evaluations did not include any comments suggesting problems with the contractors. For example, for seven contractors we found documentation indicating that the Office of Risk Management had to reduce the contractors' invoices because the contractors had overbilled the state. We also found documentation indicating that the Office of Risk Management had to send multiple requests to two contractors to obtain case status reports. Neither of these problems was addressed in the contractors' performance evaluations. In total, we found that the Department of Justice subsequently awarded 18 contracts to contractors who had displayed performance problems in the past.

If we apply these sample results to the entire population, it means that between 29 and 93 of the 368 total contracts awarded by the Office of Risk Management over the last fiscal year were awarded to contractors who had received negative comments on their prior performance evaluations. Furthermore, an additional 20 to 78 of the 368 total contracts were awarded to contractors whose files contained documentation suggesting performance problems during previous contracts, even though their performance evaluations did not include any negative comments.

No Written Policies and Procedures for Selection Process

As previously discussed, management controls help government program managers achieve desired results through effective stewardship of public resources. The previous sections discuss various weaknesses we found in the Department of Justice's control structure related to its process of selecting legal services contractors. These weaknesses existed because the department did not develop and fully implement written policies and procedures governing the selection process. The lack of written policies and procedures is a violation of Louisiana R. S. 49:258(1), which requires a written appointment procedure. Without a structured process for verifying candidates' qualifications, selecting the contractors, and evaluating their performance, the department cannot ensure that contracts are awarded to the highest qualified candidates at compensation that is fair and reasonable to the state. Therefore, there is no assurance that the department obtained the best possible representation for the state and that the state's money was spent in a cost-effective manner.

An integral part of any control structure is the creation and retention of documents showing why specific actions were taken. By documenting its actions, the department can prevent improprieties and establish public confidence in the process used to procure legal services. According to the National Association of State Purchasing Officials, documenting the reasons for selecting candidates should be sufficient to allow competing candidates, the public, the press, and auditors to follow the course of the transactions. The National Association of State Purchasing Officials says that documenting the methods of evaluation and the basis for the award decisions are especially important.

Rate Setting Process

Were the Department of Justice's billing rates for legal services contractors fair and reasonable to the state?

We could not determine whether the rates paid to legal services contractors were fair and reasonable. State law requires agencies to negotiate with prospective contractors at rates that are determined in writing to be fair and reasonable to the state. However, neither the Department of Justice nor the Office of Risk Management could provide documentation supporting the reasonableness and fairness of the rates that were in effect throughout the fiscal year ended June 30, 2000.

The rates paid to contractors we reviewed appear to be below current market rates, which could be considered a bargain for the state. Conversely, paying rates that are lower than market rates may discourage some potential contractors from applying for state legal services work.

Neither agency has developed and implemented written policies and procedures for setting contract rates. The lack of controls necessary to ensure that rates are fair and reasonable means that contractors could have been overpaid for their legal services or that the department, by not paying reasonable rates, may not have obtained the best representation for the state.

Recommendation 5: The Department of Justice should develop and fully implement written policies and procedures for setting hourly contract rates that are fair and reasonable to the state of Louisiana. The policies and procedures should include provisions for reviewing and updating the rates periodically and for retaining documentation that supports the department's rate setting decisions.

Summary of Department of Justice Response: Disagree. There is no requirement to provide documentation for setting contract rates. (See Appendix F for the full text of the Department of Justice response.)

Legislative Auditor's Additional Comments: The department's response does not address the issue of written policies and procedures for rate setting. While there may not be a requirement in state law to provide documentation for setting contract rates, doing so would help show that the rates paid to contractors are fair and reasonable to the state. In addition, stating the procedures in writing would ensure continuity over time in the way this function is to be handled.

Recommendation 6: The Office of Risk Management should develop and fully implement written policies and procedures for setting hourly contract rates that are fair and reasonable to the state of Louisiana and that are at or below the rate maximums set by the Department of Justice. The policies and procedures should include provisions for reviewing and updating the rates periodically and for retaining documentation that supports its rate setting decisions.

Summary of Office of Risk Management Response: Disagree. The State Risk Director does not need or use a written procedure for setting hourly contract rates. (See Appendix G for the full text of the Office of Risk Management response.)

Legislative Auditor's Additional Comments: Written policies and procedures are a means of providing reasonable assurance that the state's resources are used effectively and efficiently. They also help ensure continuity over time in the way functions are to be handled.

No Documentation Supporting Current Rates

According to Louisiana R. S. 39:1499, agencies must negotiate with the highest qualified candidates at compensation that is determined in writing to be fair and reasonable to the state. As explained earlier in this report, the Department of Justice sets hourly maximum rates paid to all legal services contractors who do work for the state. The Department of Justice last set the maximum hourly contract rates in 1992. The Office of Risk Management cannot pay more than the rates set by the Department of Justice, but it is allowed to pay less. The Office of Risk Management last changed its rates in 1998.

When asked to describe the process for setting rates, Department of Justice officials said that they conducted an analysis to determine the market average and then usually set their rates lower than the average. However, the department could not provide us with any documentation of the market analysis used to set the rates. An Office of Risk Management memorandum states that in 1998 rates were increased primarily because they had not been increased in over nine years and the rates paid by insurance companies were well in excess of those paid by the Office of Risk Management. The State Risk Director said that his staff conducted a survey of insurance companies and that as a result of this survey, the Office of Risk Management adjusted its rates to what it considered to be a fair price for the services performed. However, the Office of Risk Management could not provide documentation supporting the insurance company rates because the individual who performed the survey discarded his analysis before he retired.

Rates Are Below Private Sector Rates

In our survey of the legal services contractors included in our sample, we found that the average rates those contractors typically charge to the private sector are greater than both the Department of Justice's and the Office of Risk Management's rates. (See Appendix E for the survey results.) Exhibit 2 on the following page shows a comparison of the rates paid by Department of Justice to those typically charged to the private sector by the attorneys we surveyed. Recall that the Office of Risk Management's rates are lower than the maximums set by the Department of Justice.

Department of Justice officials stated that the department should not pay market rates because the contractors receive benefits that compensate for the reduced fees and/or they take the cases for motives other than monetary gain. These benefits include prompt payment and the recognition resulting from handling high-profile cases. However, according to department officials and one legal services contractor we surveyed, some private law firms do not wish to be considered for legal services contracts because the Department of Justice's rates are too low.

Exhibit 2 Comparison of Department of Justice's Hourly Rates to Average Hourly Rates Charged in Private Sector by Attorneys Surveyed Fiscal Year Ended June 30, 2000			
Type of Service	Department of Justice's Maximum Hourly Rate	Average Rate Contractors Charge Private Sector Clients	Difference
Attorneys with 10 or more years of experience	\$150	\$164	\$14
Attorneys with 5 to 10 years of experience	\$135	\$142	\$7
Attorneys with 3 to 5 years of experience	\$120	\$120	\$0
Attorneys with less than 3 years of experience	\$100	\$106	\$6
Paralegals	\$45	\$54	\$9
Law Clerks	\$25	\$48	\$23
Source: Prepared by legislative auditor's staff using rate scales provided by Department of Justice and information obtained from legal services contractors we surveyed.			

No Written Policies and Procedures for Rate Setting Process

As previously discussed, written policies and procedures are an integral part of a management control structure that is necessary to provide reasonable assurance that the state's resources are used effectively and efficiently. These policies and procedures should include provisions to create and retain documentation of decisions made or actions taken. This documentation provides evidence of the implementation of the policies and procedures.

We found that neither the Department of Justice nor the Office of Risk Management has developed or implemented written policies and procedures governing the rate setting process. Without a structured process for setting rates, these agencies cannot be reasonably assured that the compensation paid to legal services contractors is fair and reasonable to the state or that competition is fostered, as required by Louisiana R. S. 39:1481(B). Lack of a formal process for setting contract rates may result in rates being too high--causing the state to overspend, or rates being too low--possibly causing the state to forego the best representation.

Appendices

Appendix A: Audit Scope and Methodology

We conducted this audit in accordance with generally accepted government auditing standards as promulgated by the Comptroller General of the United States. Work on this audit began in late March 2000 and ended in September 2000. We limited our audit work to contracts awarded during the fiscal year ended June 30, 2000.

To achieve the first audit objective of determining how the Department of Justice decided to hire contractors for legal services, we conducted legal research to determine the legal requirements for this process. We also interviewed key personnel at the Department of Justice to understand the process used in deciding to use legal services contractors. We then electronically obtained from the Integrated Statewide Information System a list of all legal services contracts issued by the Department of Justice and the Office of Risk Management during the fiscal year ended June 30, 2000. We used specialized audit software to analyze the data. The data showed that the Department of Justice awarded six legal services contracts during this time period. We selected all six of these contracts for detailed review and analysis. The data also showed that for the same time period, the Office of Risk Management awarded 368 legal services contracts for the Risk Litigation Division within the Department of Justice. Using the specialized audit software, we randomly selected a sample of 60 of these contracts for detailed review and analysis.

After selecting the 66 contracts for detailed review and analysis, we reviewed supporting documentation at the Office of Risk Management and the Department of Justice. If documentation was lacking, we obtained information through interviews with agency officials.

Where appropriate, when reporting the results of our work on the sample of 60 contracts awarded by the Office of Risk Management, we used statistical techniques to extrapolate the sample results to the entire population of 368 contracts. Because we did not review documentation for all 368 contracts, the extrapolations provide estimates of what would be found if we had reviewed all 368 contracts. These estimates are presented in the audit report in the form of ranges of numbers. The method used to construct the ranges ensures that there is a 95% probability that the actual results are within the ranges.

To achieve the second audit objective of determining whether the Department of Justice's process for selecting legal services contractors resulted in contracts being awarded to the highest qualified persons and whether contractor performance evaluations were useful to the selection process, we conducted legal research to determine the legal requirements for this process. We also interviewed Department of Justice and Office of Risk Management officials to obtain an understanding of the process for selecting and evaluating legal services contractors. In addition, we reviewed the American Bar Association's *Model Procurement Code for State and Local Governments* and the National Association of State Purchasing Officials' *State and Local Government Purchasing Principles and Practices* for standards related to the selection of legal services contractors. We compared the department's process to the standards contained in these two publications and identified control strengths and weaknesses.

To determine whether the Department of Justice selected the legal services contractors in accordance with Louisiana's statutes, we reviewed all available documentation indicating how the department selected the contractors for the 66 contracts we reviewed. To determine if the department verified the minimum qualifications of the legal services contractors, we reviewed department records for each of the contractors who received the contracts in our sample. We compared the information contained in these files to the minimum qualifications established by the department and identified differences. (See Appendix D for the minimum qualifications for contract attorneys.)

To determine the accuracy and thoroughness of the final performance evaluations prepared for previously used legal services contractors who were awarded new contracts during the fiscal year ended June 30, 2000, we reviewed the applicable performance evaluations completed just before the start date of the contracts in our sample. We also reviewed supporting documentation for the performance evaluations maintained by the Department of Justice and the Office of Risk Management. We compared the performance evaluations to the supporting documentation and identified inaccuracies and omissions.

To achieve the third audit objective of determining whether the Department of Justice's billing rates were fair and reasonable to the state of Louisiana, we interviewed key personnel at the Department of Justice and the Office of Risk Management to obtain an understanding of how the rates were established. We also sent questionnaires to the 48 legal services contractors who were awarded the contracts in our sample¹. In the questionnaire, we asked the contractors for the rates they typically charge clients in the private sector for six categories:

- Attorneys with 10 or more years of experience
- Attorneys with from 5 to 10 years of experience
- Attorneys with from 3 to 5 years of experience
- Attorneys with less than 3 years of experience
- Paralegals
- Law clerks

We received 32 responses (67%) to our survey. (See Appendix E for the survey results.) We used these responses to determine the average rates charged by the contractors. We then compared those averages to the Department of Justice's maximum hourly rates.

¹ Some contractors were awarded more than one contract.

Appendix B: Detail of Legal Services Contract Expenditures for Fiscal Year Ended June 30, 2000

We prepared this list using unaudited information provided by the Department of Justice. The last column includes only those contracts for which payments were made during the fiscal year. Some contractors may have had additional contracts for which they did not receive payments during the fiscal year. These contractors were paid from funds appropriated to the Department of Justice.

Expenditures for Contracts Awarded by Department of Justice for Civil Cases		
Contractor Name	Amount Paid	Number of Contracts
Allen, Gooch, Bourgeois, Breaux & Robison	\$63,299	3
Dorinda C. Bordlee	\$29,816	1
Kantrow, Spaht, Weaver & Blitzler	\$9,196	1
Kean, Miller, Hawthorne, D'Armond, McCowan & Jarman	\$35,949	1
Roy, Kiesel & Tucker	\$1,455	2
P. R. Lamonica	\$81,700	1
Phelps Dunbar	\$67,985	1
Schully, Roberts, Slattery, Jaubert & Marino	\$20,000	1
Silva & Simpson	\$34,539	1
Taylor, Porter, Brooks & Phillips	\$70,820	1
TOTAL FOR DEPARTMENT OF JUSTICE	\$414,759	13

We prepared this list using unaudited information provided by the Office of Risk Management. Some contractors are listed more than once because either they have multiple office locations or their firm changed names, or both. The list includes contract expenditures for each location or each firm name. The last column includes only those contracts for which payments were made during the fiscal year. Some contractors may have had additional contracts for which they did not receive payments during the fiscal year. These contracts were paid from the Self-Insurance Fund, which is overseen by the Office of Risk Management.

According to a Department of Justice official, approximately 15% of the contracts listed in the following table are for litigation that began before January 1992, which is when the current Attorney General took office. Therefore, some of the expenditures detailed below and on the following pages were for contractors who were originally selected in previous years for litigation that was still ongoing during the fiscal year ended June 30, 2000.

Expenditures for Contracts Awarded by Office of Risk Management for Personal Injury Claims Against the State		
Contractor Name	Amount Paid	Number of Contracts
Abrams & Lafargue	\$245,941	18
Allen, Gooch, Bourgeois, Breaux & Robison	\$62,258	12
Andrus, Boudreaux, Lemoine & Tonore	\$6,986	2
Arlene C. Edwards	\$19,759	7
Avant & Falcon	\$12,412	2
Babst, Calland, Clements & Zomnir	\$2,076	1
Barbee & Stern	\$15,750	1
Barkley & Thompson	\$8,824	1
Barnwell, Whaley, Patterson & Helms	\$17,512	1
Barry W. Miller	\$2,046	2
Belcher & Prendergast	\$19,512	8
Ben Louis Day	\$15,390	1
Bencomo & Associates	\$86,539	25
Bernsen, Jamail & Goodson	\$1,491	1
Berrigan, Litchfield, Schoneak & Mann	\$546,101	41

Expenditures for Contracts Awarded by Office of Risk Management for Personal Injury Claims Against the State (Continued)		
Contractor Name	Amount Paid	Number of Contracts
Bertrand & Soileau	\$4,433	1
Blue Williams	\$115,869	12
Bobby L. Culpepper & Associates	\$378	1
Boles, Boles & Ryan	\$92,559	28
Booth, Lockard, Politz, Lesage & D'Anna	\$43,535	23
Bowers & Bowers	\$62,906	9
Breazeale, Sachse & Wilson	\$3,110	2
Breazeale, Sachse & Wilson	\$123,126	6
Briney & Foret	\$2,580	1
Brittain & Sylvester	\$85,261	9
Brook, Pizza & Van Loon	\$246,465	19
Brook, Van Loon & Latham	\$88,361	13
Bryan & Jupiter	\$3,640	4
Burglass & Associates	\$10,801	1
Burglass & Associates	\$262,647	36
Burglass & Tankersley	\$1,934	1
Burke & Mayer	\$96,654	4
Bussey & Lauve	\$154,981	21
Campbell, McCranie, Sustrunk, Anzelmo & Hardy	\$972	3
Canova & Delahaye	\$173	1
Capella Law Firm	\$24,016	9
Carl Schumacher	\$953	1

Expenditures for Contracts Awarded by Office of Risk Management for Personal Injury Claims Against the State (Continued)		
Contractor Name	Amount Paid	Number of Contracts
Carter & Cates	\$8,160	2
Cashe, Lewis, Moody & Coudrain	\$34,064	16
Casten & Pearce	\$119,241	35
Chaffe, McCall, & Phillips	\$133,505	13
Charles F. Wagner	\$153,885	13
Chopin, Wagner, Cole, Richard, Reboul & Kutcher	\$1,559	2
Comegys, Jones, Odom, Spruiell & Davis	\$132	1
Connick, Lentini, Wimberly & Delaup	\$5,571	1
Cook, Yancey, King & Galloway	\$28,019	9
Crawford & Lewis	\$155,694	15
Daigle, Sullivan, Dupre' & Aldous	\$323	2
David K. Balfour	\$890	1
David P. Spence	\$21,094	7
David R. Paddison	\$1,196	1
Davis Law Office	\$20,501	4
Decuir & Clark	\$44,747	8
Demartini, D'Aquila & Volk	\$4,742	1
Deutsch, Kerrigan & Stiles	\$1,821	1
Didriksen & Carbo	\$27,308	1
Didriksen Law Firm	\$47,834	2
Donnie L. Floyd & Associates	\$100	1
Donnie L. Floyd	\$403	3

Expenditures for Contracts Awarded by Office of Risk Management for Personal Injury Claims Against the State (Continued)		
Contractor Name	Amount Paid	Number of Contracts
Duncan Kemp	\$9,390	4
E. Barton Conradi	\$20,341	3
Earl G. Perry, Jr.	\$18,725	2
Edwards Law Firm	\$721	1
Fayard & Honeycutt	\$8,466	1
Feingerts & Kelly	\$15,679	3
Fisher & Phillips	\$1,809	2
Forrest L. Bethay	\$1,980	1
Forrester, Jordan & Dick	\$39,786	1
Frilot, Partridge, Kohnke & Clements	\$220,639	26
Funderburk & Andrews	\$61,666	7
G. Frederick Kelly, III	\$118,319	2
Gail N. McKay	\$62,518	5
Gelpi, Sullivan & Carroll	\$392	1
Gertler, Gertler, Vincent & Plotkin	\$20,035	13
Glusman, Moore, Arbour, Broyle & Glusman	\$227	2
Gold, Weems, Bruser, Sues & Rundell	\$1,389	2
Golden & Fonte	\$324,399	42
Goode & Landry	\$3,145	2
Griffith & Conroy	\$4,173	1
Haik & Minvielle	\$275	1
Haik, Minvielle & Grubbs	\$78,006	13

Expenditures for Contracts Awarded by Office of Risk Management for Personal Injury Claims Against the State (Continued)		
Contractor Name	Amount Paid	Number of Contracts
Halpern, Danner & Faia	\$16,079	5
Halpern, Danner & Winsberg	\$2,736	1
Hayes, Harkey, Smith & Cascio	\$180,042	40
Hebert, Mouledoux & Bland	\$3,144	1
Henchy, Verbois, Futrell & Foil	\$403	2
Henry D. H. Olinde, Jr.	\$161	1
Hudson, Potts & Bernstein	\$129,211	45
Hulse & Wanek	\$10,097	2
I. Jackson Burson, Jr.	\$755	1
Irving H. Koch	\$336	2
J. Peyton Parker, Jr.	\$5,824	1
Jacqueline G. Griffith	\$11,439	1
James F. Abadie	\$2,928	5
James R. Strain, Jr.	\$79,947	1
James Trey Phillips	\$23,663	9
Jay C. Zainey	\$126,116	23
Jeansonne & Remondet	\$31,710	1
Jimmy D. Long, Jr.	\$461	1
John M. Crum, Jr.	\$1,535	1
Johnson, Johnson, Barrios & Yacoubian	\$20,606	7
Jones, Odom, Spruiell & Davis	\$462	1
Jones, Odom, Spruiell, Davis & Politz	\$51,796	25

Expenditures for Contracts Awarded by Office of Risk Management for Personal Injury Claims Against the State (Continued)		
Contractor Name	Amount Paid	Number of Contracts
Jones, Walker, Waechter, Poitevent, Carrere & Denegre	\$142,126	2
Jones, Walker, Waechter, Poitevent, Carrere & Denegre	\$101,004	7
Joseph B. Stamey	\$30,977	1
Joseph W. Rausch	\$930	1
Kantrow, Spaht, Weaver & Blitzler	\$13,956	4
Kean, Miller, Hawthorne, D'Armond, McCowan & Jarman	\$30,856	2
Keogh, Cox & Wilson	\$542	1
Koch & Koch	\$73,468	18
Krieger, Krieger & Levko	\$17,665	3
Lafargue & Lafargue	\$17,508	3
Lafargue Law Office	\$7,589	4
Lamothe & Hamilton	\$65,670	4
Lane & Cotton	\$5,851	2
Law Office of Richard Breau	\$32,190	8
Law Office of Robert L. Hackett	\$4,633	1
Law Office of Steven J. Dupuis	\$361	1
Law Offices of Gravel & Cespiv	\$50,495	12
Leake, Andersson & Mann	\$675	1
LeBlanc, Miranda & Delaup	\$1,423	1
Lemle & Kelleher	\$46,505	14
Leonard & Leonard	\$6,180	1
Locke, Purnell, Rain & Harrell	\$83,189	5

Expenditures for Contracts Awarded by Office of Risk Management for Personal Injury Claims Against the State (Continued)		
Contractor Name	Amount Paid	Number of Contracts
Locke, Liddell & Sapp	\$5,411	3
Lon D. Norris	\$4,330	3
Long Law Firm	\$101,634	22
Lowe, Stein, Hoffman, Allweiss & Hauver	\$53,705	1
Lozes & Cambre	\$4,001	1
Lunn, Irion, Johnson, Salley & Carlisle	\$2,636	3
Matchett Law Firm	\$3,742	1
Matchett, Verbois, Futrell & Henchy	\$4,116	3
Mayer, Smith & Roberts	\$3,398	3
McCalla, Thompson, Pyburn, Hymowitz & Shapiro	\$456,275	4
McCollister & McCleary	\$15,008	7
McCollister & McCleary	\$6,685	9
McGlinchey Stafford	\$774,915	6
McLeod, Verlander, Eade & Verlander	\$3,333	1
Meredith, Donnell & Abernethy	\$1,154	4
Michael R. Delesdernier	\$9,270	4
Michael T. Johnson & Associates	\$43,969	42
Mickey Paduda	\$11,330	2
Middleburg, Riddle & Gianna	\$145,085	36
Miller, Canfield, Paddock & Stone	\$11,214	1
Milling, Benson, Woodward, Hillyer, Pierson & Miller	\$6,559	1
Mouledoux, Bland, Legrand & Brackett	\$13,266	2

Expenditures for Contracts Awarded by Office of Risk Management for Personal Injury Claims Against the State (Continued)		
Contractor Name	Amount Paid	Number of Contracts
Nat G. Kiefer, Jr.	\$42,630	2
Nicaud, Sunseri & Fradella	\$16,827	1
Oats & Hudson	\$48,145	10
Oats & Hudson	\$198,871	32
O'Dowd & O'Dowd	\$4,010	1
Panzeca & D'Angelo	\$153,491	24
Patrick J. Berrigan	\$41,433	3
Perret Doise	\$6,815	1
Pettiette, Armand, Dunkelman, Woodley & Byrd	\$10,265	6
Picard & Stipe	\$7,006	2
Pickering, Cotogno & Dunn	\$56,672	2
Plauche, Maselli & Landry	\$8,803	7
Plauche, Maselli, Landry & Parkerson	\$17,731	5
Plauche, Smith & Nieset	\$982	1
Poynter, Mannear & Colomb	\$720	2
Provosty, Sadler & Delauney	\$107,142	25
Provosty, Sadler, Delauney, Fiorenza & Sobel	\$2,057	2
R. O'Neal Chadwick, Jr.	\$2,033	1
Rabalais, Unland & Lorio	\$7,518	1
Raggio, Cappel, Chozen & Bernard	\$14,778	1
Randall J. Cashio	\$30,170	7
Rankin, Yeldell, Herring, Katz & Downs	\$166,346	38

Expenditures for Contracts Awarded by Office of Risk Management for Personal Injury Claims Against the State (Continued)		
Contractor Name	Amount Paid	Number of Contracts
Rankin, Yeldell, Herring & Katz	\$127,055	34
Richard R. Storms	\$60,893	10
Robert D. Hoover	\$1,026	1
Rodney, Bordenave, Boykin & Bennett	\$2,458	4
Rodney Bordenave, Boykin, Bennett & Boyle	\$15,677	2
Roedel, Parsons, Koch, Frost, Balhoff & McCollister	\$24,324	1
Ronnie J. Champlin & Associates	\$9,375	2
Rowe, Bares & Oliver	\$7,740	1
Roy, Bivins, Judice & Henke	\$8,880	4
Ryan Law Firm	\$805	1
Schumacher Law Corporation	\$44,490	3
Scofield, Gerard, Veron, Singletary & Pohorelsky	\$141,673	6
Seale, Daigle & Ross	\$96,132	8
Seale, Macaluso, Daigle & Ross	\$5,703	1
Seale, Smith, Zuber & Barnette	\$8,479	5
Shows, Cali & Burns	\$19,058	13
Shows, Cali & Berthelot	\$45,275	15
Simien & Miniex	\$17,515	1
Simoneaux, Ryan, Carleton & Dunlap	\$103,872	2
Simoneaux, Ryan, Carleton, Rowe & Dunlap	\$16,392	1
Skinner & Stipe	\$4,497	2

Expenditures for Contracts Awarded by Office of Risk Management for Personal Injury Claims Against the State (Continued)		
Contractor Name	Amount Paid	Number of Contracts
Sooter & Savoie	\$2,416	1
Stacey Moak & Associates	\$270,304	34
Stafford, Stewart & Potter	\$42,690	7
Stamey, Long & Keiser	\$8,974	1
Stanley & Flanagan	\$3,793	1
Stephen C. Kogos	\$19,711	9
Stephen J. Caire & Associates	\$23,701	3
Steven E. Adams	\$1,240	1
Stipe & Associates	\$5,488	3
Stockwell, Sievert, Viccellio, Clements & Shaddock	\$87,548	5
Talley, Anthony, Hughes & Knight	\$29,513	6
Tarcza & Gelderman	\$6,972	1
Taylor & Trosclair	\$18,552	1
Taylor, Porter, Brooks & Phillips	\$747	1
Taylor, Porter, Brooks & Phillips	\$330,963	57
Taylor, Porter, Brooks & Phillips	\$1,568	1
Terry M. Irby	\$49,275	6
Boles Law Firm	\$3,819	1
Cantrell Law Firm	\$19,789	4
Theus, Grisham, Davis & Leigh	\$6,841	4
Thomas K. Brocato	\$33,179	4
Trapolin Law Firm	\$85,924	14

Expenditures for Contracts Awarded by Office of Risk Management for Personal Injury Claims Against the State (Continued)		
Contractor Name	Amount Paid	Number of Contracts
Uddo & Milazzo	\$6,879	1
Vezina & Gattuso	\$44	1
Vezina & Gattuso	\$292,453	73
Voorhies & Labbe	\$59,138	9
W. Brian Babin	\$275	1
Waguespack, Seago & Carmichael	\$8,912	1
Walker, Tooke & Lyons	\$12,229	6
Walker, Tooke, Lyons & McKeithan	\$197	2
Walter I. Willard	\$8,865	1
Walter R. Krousel & Associates	\$10,885	1
Ward Nelson	\$31,465	1
Ward, Nelson, & Pelleteri	\$33,693	2
Watson, Blanche, Wilson & Posner	\$13,124	1
Weems, Schimpf, Hayter, Gilsoul & Carmouche	\$188,477	37
Weems, Wright, Schimpf, Hayter & Carmouche	\$22,679	11
Weigand & Dodd	\$10,110	1
Weiss & Eason	\$97,057	24
Wilkerson, Tate & Williams	\$90	1
Willard Brian Babin	\$39,258	5
William A. Norfolk	\$1,875	1
William J. Doran, Jr.	\$1,179	1
William L. Goode & Associates	\$809	2

Expenditures for Contracts Awarded by Office of Risk Management for Personal Injury Claims Against the State (Concluded)		
Contractor Name	Amount Paid	Number of Contracts
William W. Hall	\$9,429	12
Williams, Mullen, Clarke & Dobbin	\$13,255	1
Woodley, Williams, Fenet, Palmer, Boudreau & Norman	\$452	1
Woodley, Williams, Boudreau, Norman, Brown & Doyle	\$269,629	10
Woodley, Williams, Fenet, Boudreau, Norman & Brown	\$119	1
Zelda W. Tucker	\$39,194	5
TOTAL FOR OFFICE OF RISK MANAGEMENT	\$11,355,642	1,702
Source: Prepared by legislative auditor's staff using unaudited information provided by Department of Justice and Office of Risk Management.		

Appendix C: Rates Paid to Legal Services Contractors

Hourly Rates Paid to Legal Services Contractors by Department of Justice and Office of Risk Management			
Level of Experience	Department of Justice	Office of Risk Management (medical malpractice and complex cases)	Office of Risk Management (all other cases)
Attorneys with 10 or more years of experience	\$150	\$115	\$100
Attorneys with 5 to 10 years of experience	\$135	\$115	\$100
Attorneys with 3 to 5 years of experience	\$120	\$95	\$85
Attorneys with less than 3 years of experience	\$100	\$75	\$75
Paralegals	\$45	\$35	\$35
Law Clerks	\$25	\$25	\$25
Source: Prepared by legislative auditor's staff using rate scales provided by Department of Justice and Office of Risk Management.			

Appendix D: Minimum Qualifications for Contract Attorneys

Minimum Qualifications for Contract Attorneys	
1.	The attorney shall be admitted to practice law in the state of Louisiana unless the action is pending in another state, in which event the attorney shall be admitted to practice in the state where the action is pending.
2.	If the action is pending before a federal court or other court of special admission requirements, the attorney shall be admitted to practice before such court.
3.	The attorney shall not be under suspension by the Louisiana Supreme Court or any court in which the action is pending.
4.	The attorney nor any attorney with whom he is engaged in the practice of law shall represent any plaintiff in any tort claim against the state and/or its departments, commissions, boards, agencies, officers, officials, or employees.
5.	The attorney shall not have a conflict of interest as provided by the Rules of Professional Conduct of the Louisiana State Bar Association.
6.	The attorney shall have and maintain professional malpractice insurance with minimum coverage of \$500,000 per claim with an aggregate of \$1 million.
7.	The attorney should have a Martindale-Hubbell rating of “bv” or better.
8.	The attorney should have been admitted to and engaged in the practice of law for a minimum of three years.
9.	The requirements set forth in 7 and 8 may be waived by the attorney general in which event the attorney will be placed on a probationary status for a period of three years. During the period of probation, the attorney’s performance will be evaluated annually by the claims manager of the Office of Risk Management and the director of litigation of the attorney general’s office. In the event that the attorney’s performance is acceptable during the three-year probationary period, he shall be removed from the probationary status and placed on the approved list. In the event that the attorney’s performance is unsatisfactory, he may be removed from the probationary list or, in the discretion of the claims manager and director of litigation, his probationary period may be extended.
10.	Any attorney appointed by the attorney general serves at the pleasure of the attorney general and may be removed by the attorney general at any time without cause.
11.	The state commissioner of administration may withdraw his concurrence of any attorney only for cause.
12.	If a state legislator is a member of a law firm, he shall be completely screened from participation in any matter in which the firm represents the state and/or its departments, etc., and (s)he shall not be apportioned any portion of any fee derived from any such representation.

Additional Requirements for Defense of Medical Malpractice Claims

13. The attorney should have three years of experience in the defense of medical malpractice claims.
14. The attorney should have participated as counsel of record in at least two medical malpractice trials.
15. Professional malpractice limits shall be at least \$1 million per claim and with an aggregate of \$1 million.
16. Requirements 13 and 14 may be waived by the attorney general in which event the attorney will be placed on probation as to medical malpractice defense as provided in paragraph 9 on the previous page.

Source: Prepared by legislative auditor's staff using information provided by Department of Justice.

Appendix E: Results of Survey of Legal Services Contractors

We sent questionnaires to the 48 legal services contractors who were awarded the 66 contracts we reviewed in this audit¹. In the questionnaires, we asked the contractors for the rates they typically charge clients in the private sector for six categories of experience. We received 32 responses (67%).

The contractors who responded did not provide rates for categories for which they do not charge their clients. If the contractor provided a range of fees for a particular category, we determined the average fee using the highest and lowest fees that were provided and we used that average as the typical fee charged for that category. We then averaged the rates for all respondents for each category of service to arrive at the amounts presented in the table below.

Level of Experience	Average Hourly Rates Charged to Private Sector Clients
Attorneys with 10 or more years of experience	\$164
Attorneys with from 5 to 10 years of experience	\$142
Attorneys with from 3 to 5 years of experience	\$120
Attorneys with less than 3 years of experience	\$106
Paralegals	\$54
Law Clerks	\$48
Source: Prepared by legislative auditor's staff using information provided by legal services contractors surveyed.	

¹ Some contractors received more than one contract.

Appendix F

Department of Justice's Response



RICHARD P. IEYOUNG
ATTORNEY GENERAL

State of Louisiana

DEPARTMENT OF JUSTICE

Baton Rouge

70804-9005

P.O. Box 94005
TEL: (504) 342-7013
FAX: (504) 342-7335

December 6, 2000

RECEIVED
LEGISLATIVE AUDITOR
2000 DEC - 6 AM 8:59

Dr. Daniel G. Kyle, Ph.D., CPA, CFE
Legislative Auditor
Post Office Box 94397
Baton Rouge, Louisiana 70804-9397

Re: Responses of the Department of Justice
to the Performance Audit dated December 2000

Dear Dr. Kyle:

As you are aware, the Department of Justice had its preliminary exit conference on Friday, October 6, 2000. Your office also conducted a preliminary exit conference with the Office of Risk Management (ORM) on Monday, October 9, 2000.

On October 10, 2000, your Office requested additional information from ORM on all of its 368 legal service contracts for FY 99-2000.

At the earlier preliminary exit conferences, as well as the meeting I had with you and your staff on November 29, 2000, I expressed concerns about the format of the audit in relation to the State's Self-Insurance Program or Risk Management Program.¹

As you are aware the Risk Management Program involves the interaction of this Department's Litigation Program and the Division of Administration's Office of Risk Management.

Under the provisions of R.S. 39:1533 B, this Office's Litigation Program is responsible for providing representation of the state and state agencies through in-house attorneys or "...by private legal counsel appointed by the attorney general with the concurrence of the commissioner of administration..." This statute and the I.A.T. Agreement between ORM and this Department authorizes and provides that ORM, not this Department, contract with the private legal counsel. Under R.S. 39:1535, ORM is responsible for the "...administration of the state's risk management program..." The Legislature appropriates funds to ORM, not this Department, for the payment of contract counsel. The Legislature authorizes organizational positions to ORM, not this Department, for the supervision and monitoring of contract attorneys' performance.

¹ La. R.S. 39:1527, *et. seq.*

We requested that your Office separate this audit into two audits – one of this Department's utilization of legal service contracts and one of the State's Risk Management Program's (ORM and DOJ/Litigation Program) utilization of legal services contracts. This audit structure would certainly enhance the audit's clearness, completeness and accuracy as is required by generally accepted government auditing standards, GAGAS.²

As we also mentioned to you in our November 29th meeting, "Appendix B", the table of legal services expenditures, contains numerous inaccuracies.

This Department has obtained three sets of data from ORM in an attempt to validate the data in "Appendix B"; however, we have not yet been successful in validating the data in Appendix B.

The Department of Justice objects to the inclusion of "Appendix B" in the final audit report for the following reasons:

1. The data has been shown to be inaccurate.
2. The data is not material or relevant to your Office's stated audit objectives.
3. The data is not referenced or included within the "Audit Scope and Methodology" and is at variance with the standard auditing practice of utilization of randomly selected sample data.
4. Based upon the latest data furnished to us by ORM, the Department estimates that approximately 15% of the contracts included in the table are for cases that arose prior to my first term as attorney general, January 13, 1992. We further estimate that less than 8% of the contracts included within the table are for cases in which contract counsel was appointed during FY 99-2000. This is clearly in direct contravention with your Office's statement that "...We limited our audit work to contracts awarded during fiscal year ending June 30, 2000."

Attached please find our response that should be included in the Executive Summary, our responses that should be included in the Body of the Audit and our response for inclusion in Appendix F.

² *Government Auditing Standards*, (GAGAS), (1994 revision), Amendment No. 2, United States General Accounting Office, Chapter 7, Sections: 7:51-53; 7:54-56; 7:61-63, updated 8/13/99.

Dr. Daniel G. Kyle, Ph.D., CPA, CFE

December 6, 2000

Page Three

Sincerely,

A handwritten signature in cursive script, appearing to read "Richard P. Ieyoub", written over a horizontal line.

RICHARD P. IEYOUB
ATTORNEY GENERAL

c: Mr. David Greer, Director of Performance Audit
Ms. Kerry E. Fitzgerald, Performance Audit Manager
Mr. Kyle Farrar, Auditor-In-Charge
Mr. Cliff Bingham, Deputy Attorney General
Ms. Kay Kirkpatrick, Deputy Attorney General
Mrs. Mary C. McGinn, Deputy Director, Administrative Services

**RESPONSES OF THE DEPARTMENT OF JUSTICE
TO THE PERFORMANCE AUDIT REPORT – APPENDIX F
DATED NOVEMBER 29, 2000**

Recommendation 1

Management Response:

Article IV Section 8 of the Constitution, vest the attorney general with the sole authority to appoint assistant attorneys general whether staff or special (contract) to serve at his pleasure. This Department's current process of determining whether or not cases and the State's interests can be properly handled by staff assistant attorneys general constitutes a "cost-benefit analysis" under the provisions of the State's procurement laws.

The department conducts a cost-benefit analysis on each legal services contract, although not in written form. The Department has no objection to reducing our existing policies and procedures to writing. Although R.S. 39:1497 does not provide that a cost-benefit analysis be in written form, the Department of Justice already has a written listing of acceptable reasons for using legal contractors and maintains written documentation of the reasons for its appointment of a contract attorney in a particular case. These documented reasons have been provided to and analyzed by the Legislative Auditor, as reflected in Exhibit 1 of this Performance Audit. The Department of Justice is unaware of any rules or regulations promulgated by the Office of Contractual Review governing the form or contents of the required "cost-benefit analysis".

The Department of Justice appoints contract attorneys by exception. Private attorneys are appointed only when there is a compelling reason not to handle a case in-house. These reasons are listed and discussed in the audit report in the section entitled "Reasons for Using Legal Services Contractors". This department cannot ignore the State's exposure resulting from inappropriate legal representation. Acknowledging the Legislative Auditor recommendations, the Department believes the determination of the appropriate legal representation of this State is a legal issue, which the people of this State have empowered their chief legal officer, the Attorney General, to make.

The Department acknowledges the miscommunication among its staff regarding the responsibility of conducting the cost-benefit analysis and has taken steps to correct the process.

Recommendation 2

Management Response:

Attorney General Ieyoub has in the past and continues to conduct written long-term cost-benefit analysis. He conducted a long-term cost-benefit analysis by developing a three-step program to increase the utilization of Litigation Division attorneys and reduce contract attorneys for the state's tort defense.

When General Ieyoub took office in 1992, he determined that the state could not continue its heavy reliance on private contract attorneys for its tort defense. At that time there were approximately 6823 cases in the State's Office of Risk Management. Of these 6823 cases, 68% percent, or 4647 cases, were being handled by contract attorneys appointed by the former Attorney General. Attorney General Ieyoub has increased the percentage of cases handled in-house from 32% in 1992 to 79% in FY 99-00, saving millions of state tax dollars.

The three-step program is outlined as follows: Step One was completed in FY 1993-94 with the addition of 15 new attorney positions and 13 new support positions. With this increased staff, the Litigation Division handled 92.2% or 1,688 of the 1,830 new cases filed against the state in FY 1993-94 at a cost of \$3.2 million. The total number of cases being handled by private attorneys was reduced from 4,000 to 3,501 and contract attorney costs were reduced from \$20.13 million to \$19.63 million. During this same period, the Litigation Division recovered and returned to the Office of Risk Management over \$1 million through subrogation and/or intervention claims.

Step Two was implemented in FY 1994-95 with the addition of 26 attorney positions and 23 support positions and the opening of regional division offices in Shreveport, New Orleans and Lake Charles. With this staff the Litigation Division handled 87% or 1,635 of the 1,878 new cases filed during FY 1994-95, at a total cost of \$5.4 million. The total number of cases being handled by contract attorneys was reduced to 2,343 and total contract attorneys' fees were reduced to \$9.5 million. Total attorneys fees were reduced to \$14.9 million, a savings of \$7.9 million from the \$22.8 million level in FY 1993-94.

Step Three, which was approved by the 1995 Legislature, authorized the opening of regional offices in Alexandria, Lafayette, and Monroe as well as the addition of 17 attorney and 15 support positions. The Alexandria and Lafayette regional offices were opened during FY 1995-96.

The Attorney General continues to conduct long-term cost-benefit analysis as reflected in the department's Operational Plan and through its performance indicators presented to the Legislature each year. See the attached chart in Appendix F.

The Department of Justice, for several years, has made requests of the Legislature for additional personnel to handle cases in-house. As recent as within the past 60 days, the department appeared before a joint legislative committee and proposed the cost-effectiveness of increasing in-house counsel for Risk Litigation. Although members of the committee said they recognize the cost-effectiveness of increasing personnel for the department, they said they have no plans for increasing the department's staff and funding for this purpose.

Recommendation 3

Management Response:

The Legislative Auditor states that the *"the department's process for selecting legal services contractors did not ensure that contracts were always awarded to the highest qualified candidates."* The Department of Justice objects to the words "the highest". In a letter dated August 10, 2000, from Ms. Kerry Fitzgerald, Performance Audit Manager, Office of the Legislative Auditor, to Ms. Mary McGinn, Administrative Services Division, Department of Justice, the audit objective was appropriately stated as follows:

- "Determine if the Department of Justices' process for selecting legal services contractors resulted in contracts being awarded to **qualified persons** and if contractor performance evaluations were useful in the selection process."

An audit of whether or not this Department appointed qualified attorneys is certainly appropriate. However, the Department objects to the concept of appointing the "highest qualified candidate".

The State's procurement statutes, codes and regulations do not require that professional service contracts be awarded to the "highest qualified candidates". Indeed, it would be impossible and inappropriate for the Legislature to attempt to define the meaning of "highest qualified candidate". This audit failed to identify an instance in which the appointed attorney failed to meet the established minimum qualifications.

The Legislative Auditor is not empowered to, charged with the responsibility of, nor professionally qualified to evaluate the qualifications of attorneys or to second guess the attorney general's evaluation or selection of attorneys.

The Department of Justice agrees to state its general policies and procedures in writing, but strongly objects to memorializing the selection and decision making process. The Department acknowledges that three (3) of the six (6) Department of Justice contracts audited did not have written performance evaluations attached to the contract, appreciates the Legislative Auditor bringing that to our attention and the Department will certainly improve in this area. In regard to these same six contracts, the Department knows through professional experience and knowledge of qualified firms in the State of Louisiana and whether the attorney/law firm met minimum qualifications prior to selecting the contractor to handle legal services.

The Office of Risk Management, as the "using" or contracting agency, is responsible for verifying that contract attorneys meet the minimum qualifications. The Department of Justice should be commended by the Legislative Auditor for not duplicating the services already provided by the Office of Risk Management. The suggested duplication of services would be in direct contravention with R.S. 24:522C(2).

The Department of Justice is unaware of any occasion where the Office of Risk Management attempted to have any attorney appointed by the Attorney General debarred from representation of this State under the provisions of R.S. 39:1525 and La. Adm. Code, Title 34:139.

The Department of Justice requested that the Legislative Auditor's Office furnish it with examples of "... contractors who had displayed performance deficiencies in the past." The Legislative Auditor's Office did not report a single instance to this Department in which an attorney's legal performance as opposed to administrative performance was criticized. There were certainly no adverse performance findings reported to this Department which would support a claim for debarment.

R.S. 39:1535 and the Interagency Agreement between the Office of Risk Management and the Department of Justice authorizes and provides that the Office of Risk Management, not the Department of Justice, contract with the private legal counsel. The Office of Risk Management is responsible for the "...administration of the state's risk management program..." The Legislature appropriates funds to the Office of Risk Management, not this Department, for the payment of contract counsel. The Legislature authorizes organizational positions to the Office of Risk Management, not the Department of Justice, for the supervision and monitoring of contract attorneys' performance.

Under R.S. 39:1500 the "using agency," Office of Risk Management, not the Department of Justice "... shall have full responsibility for the diligent administration and monitoring of the

contract ...the using agency shall prepare a final report on the contract which shall include an evaluation of contract performance...”

R.S. 39:1499 deals with the negotiation of the *compensation* under professional, personal, or certain consulting services contracts. R.S.39:1494 specifically excepts professional services contracts from the “... the necessity of competitive bidding or competitive negotiation.” Certainly there is no prohibition for the utilization of fee schedules for professional services contracts. The Department of Justice respectfully disagrees with the Legislative Auditor’s legal interpretation of R.S. 39:1499.

The Department does have policies and procedures for selecting legal services contractors, which are based on the professional experience, evaluation and judgment of the section chiefs, directors, deputy attorneys general and the attorney general. There is a difference between having policies and procedures, which we have, and memorializing the decision making process. It would not be appropriate to document the strategic reasoning involved in the selection and decision making process, thereby exposing the State’s defense.

Recommendation 4

Management Response:

The Office of Risk Management should respond to this recommendation.

Recommendation 5

Management Response:

The Department of Justice and the Office of Risk Management currently maintain continual vigilance of rates paid for legal services within this State. The Department of Justice and the Office of Risk Management should be commended, not criticized, for their current rate structure in Risk Litigation cases, which is below the market rates as determined by the Legislative Auditor’s survey.

R.S. 39:1499 does not prohibit the utilization of fee schedules for professional services. Further, as recent as March 5, 1999, the Commission for Review and Improvement of Services Procurement (CRISP), of which the Legislative Auditor is a member, specifically approved the Department of Justice’s utilization of hourly fee cost basis and made no recommendations as to the Office of Risk Management’s utilization of professional services contracts. The Department disagrees that there is any requirement to provide documentation for setting contract rates.

Recommendation 6

Management Response:

The Office of Risk Management should respond to this recommendation.

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

The Legislative Auditor states "In addition, we reviewed the American Bar Association's *Model Procurement Code for State and Local Governments* and the National Association of State Purchasing Officials' *State and Local Government Purchasing Principles and Practices* for standards related to the selection of legal service contractors."

Management Response:

The State of Louisiana was a participant in drafting the "model" (not uniform) Procurement Code with the American Bar Association. The Louisiana Legislature enacted La. R.S. 39:1494 and specifically excepted or exempted professional services from competitive bidding.

The Department of Justice is required to follow the laws and regulations of this State and not generalized suggestive model codes, which may be developed by various professional organizations. Should the Legislative Auditor desire the Legislature to change its existing procurement practices, he should address those concerns to the Legislature and/or the Division of Administration for their consideration.

APPENDIX B: DETAIL OF LEGAL SERVICES CONTRACT EXPENDITURES FOR FISCAL YEAR ENDED JUNE 30, 2000

Management Response:

The Department of Justice has verified the data it provided to the Legislative Auditor entitled "Expenditures for Contracts Awarded by Department of Justice for Civil Cases."

However, the data provided by the Office of Risk Management entitled "Expenditures for Contracts Awarded by Office of Risk Management for Personal Injury Claims Against the State" has not been verified as accurate data.

The Department of Justice shared concerns with the Legislative Auditor that the data has been shown to be inaccurate, the data is not material or relevant to the stated audit objectives, the data is not referenced or included within the "Audit Scope and Methodology" and is at variance with the standard auditing practice of utilization of randomly selected sample data, and based upon the latest data furnished to the Department by the Office of Risk Management, the Department estimates that approximately 15% of the contracts included in the table are for cases that arose prior to General Ieyoub's first term as attorney general, January 13, 1992. The Department further estimates that less than 8% of the contracts included within the table are for cases in which contract counsel was appointed during FY 99-2000. This is clearly in direct contravention with the Legislative Auditor's statement that "...We limited our audit work to contracts awarded during fiscal year ending June 30, 2000."

FY 2001-2002 PROGRAM PERFORMANCE FORM

DEPARTMENT ID:

AGENCY ID: 04-141 Office of the Attorney General

PROGRAM ID: Program D: Risk Litigation

GENERAL PERFORMANCE INFORMATION: RISK LITIGATION, ALL CASES														
ALL CASES IN LITIGATION				CASES ASSIGNED TO PRIVATE CONTRACT ATTORNEYS					CASES HANDLED BY THE LITIGATION DIVISION					
FISCAL YEAR	LEGAL FEES AND EXPENSE \$ (In \$ Millions)	AVERAGE COST PER CASE	NUMBER OF CASES	PERCENT OF TOTAL CASES	LEGAL FEES AND EXPENSE \$ (In \$ Millions)	PERCENT OF TOTAL CASES	AVERAGE COST PER CASE	NUMBER OF CASES	PERCENT OF TOTAL CASES	TOTAL EXPENDITURES (In \$ Millions)	PERCENT OF TOTAL FEES	AVERAGE COST PER CASE	NUMBER OF TRIAL ATTORNEYS	AVERAGE CASELOAD
89-90	\$13.4	\$2,658	2,364	47%	\$10.8	81%	\$4,581	2,693	53%	\$2.6	19%	\$969	30	89.8
90-91	\$16.6	\$2,785	3,755	63%	\$13.7	82%	\$3,635	2,192	37%	\$2.9	18%	\$1,328	30	73.1
91-92	\$20.1	\$2,940	4,647	68%	\$17.1	85%	\$3,680	2,176	32%	\$3.0	15%	\$1,360	30	72.5
92-93	\$22.8	\$3,261	4,000	57%	\$20.1	88%	\$5,033	3,000	43%	\$2.7	12%	\$900	30	100.0
93-94	\$22.8	\$3,073	3,501	47%	\$19.6	86%	\$5,607	3,929	53%	\$3.2	14%	\$814	45	87.3
94-95	\$14.9	\$2,221	2,343	35%	\$9.5	64%	\$4,055	4,365	65%	\$5.4	36%	\$1,237	68	64.2
95-96	\$16.8	\$2,316	2,000	28%	\$8.5	51%	\$4,250	5,250	72%	\$8.3	49%	\$1,579	69	76.1
96-97	\$17.6	\$2,826	1,490	24%	\$9.7	55%	\$6,537	4,751	76%	\$7.9	45%	\$1,663	69	68.9
97-98	\$16.2	\$2,579	1,612	26%	\$8.0	49%	\$4,950	4,669	74%	\$8.2	51%	\$1,761	71	65.8
98-99	\$17.1	\$2,775	1,229	20%	\$8.1	47%	\$6,574	4,940	80%	\$9.0	53%	\$1,830	71	69.6
99-00	\$21.5	\$4,469	1,001	21%	\$11.4	53%	\$11,369	3,812	79%	\$10.1	47%	\$2,657	73	52.2

GENERAL PERFORMANCE INFORMATION: RISK LITIGATION, NEW CASE ASSIGNMENTS					
FISCAL YEAR	TOTAL NUMBER OF NEW CASES ASSIGNED	NUMBER OF NEW CASES ASSIGNED TO CONTRACT ATTORNEYS	NUMBER OF NEW CASES ASSIGNED TO LITIGATION ATTORNEYS	PERCENTAGE OF NEW CASES ASSIGNED TO CONTRACT ATTORNEYS	PERCENTAGE OF NEW CASES ASSIGNED TO LITIGATION ATTORNEYS
93-94	1830	142	1688	7.76%	92.24%
94-95	1878	243	1635	12.94%	87.06%
95-96	2189	209	1980	9.55%	90.45%
96-97	1860	213	1647	11.45%	88.55%
97-98	1862	266	1596	14.29%	85.71%
98-99	1541	336	1205	21.80%	78.20%
99-00	1688	299	1389	17.71%	82.29%

Appendix G

Office of Risk Management's Response



State of Louisiana
DIVISION OF ADMINISTRATION

OFFICE OF RISK MANAGEMENT
RECEIVED
LEGISLATIVE AUDITOR

M. J. "MIKE" FOSTER, JR.
GOVERNOR

00 NOV 29 AM 8:59

MARK C. DRENNEN
COMMISSIONER OF ADMINISTRATION

November 27, 2000

Dr. Daniel G. Kyle, CPA, CFE
Legislative Auditor
P.O. Box 94397
Baton Rouge, La. 70804-9397

Dear Dr. Kyle:

I have reviewed the draft copy of the performance audit your office conducted on the Department of Justice on the selection of and authorized rates for Legal Services Contractors in Tort and Civil Cases.

As you determined in your audit the responsibility of the selection of attorney rests solely with the Department of Justice. Because of this, most areas of the report do not relate to the Office of Risk Management. I will respond only to the areas that are within the control of the Office of Risk Management.

1. Issue - Lack of documentation regarding qualifications of contractors.

ORM Response - ORM believes this documentation should be in DOJ files since they are responsible for selection of the attorney.

2. Issue - One out of fifty performance evaluations prepared by ORM and reviewed by the Legislative Auditors was prepared thirty days after finalization of case. The statement made was that this evaluation (because it wasn't written until 30 days after finalization of case) could not be used by DOJ in making a decision on renewal of the contract.

ORM Response - If the auditors found only one out of fifty being prepared thirty days after case end, ORM feels this is a rather remarkable record considering the work load of our employees.

3. Issue - Files contained documented problems with attorneys yet evaluation failed to indicate any negative notes.

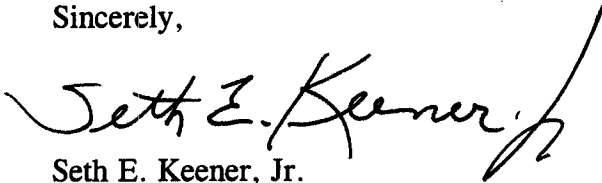
ORM Response - More effort will be made by ORM to include accurate comments in evaluations.

4. Issue - The Office of Risk Management should develop and fully implement written policies and procedures for setting hourly contract rates that are fair and reasonable to the State of Louisiana.

ORM Response - It is the purview of the State Risk Director to set rates. He does not need or use a written procedure. He periodically checks with organizations like LWCC and Liga. In addition he is aware if ORM has problems contracting with attorneys because their rates are too low. At such time he changes the rates and the billing guidelines reflect the changes. The last updates on rates occurred in 1998.

Should you have any questions or comments please advise.

Sincerely,

A handwritten signature in dark ink, appearing to read "Seth E. Keener, Jr.", with a stylized flourish at the end.

Seth E. Keener, Jr.
State Risk Director

SEK/ELW/kg